

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

RED BARN MOTORS, INC.,  
PLATINUM MOTORS, INC.,  
MATTINGLY AUTO SALES, INC.,  
YOUNG EXECUTIVE MANAGEMENT &  
CONSULTING SERVICES, INC.,  
Individually, and on behalf  
of other members of the  
general public similarly  
situated,

Plaintiffs,

Docket No.

1:14-cv-01589-TWP-DKL

vs.

COX ENTERPRISES, INC.,  
COX AUTOMOTIVE, INC.,  
NEXTGEAR CAPITAL, INC. f/k/a  
DEALER SERVICES CORPORATION,  
successor by merger with  
Manheim Automotive Financial  
Services, Inc., and JOHN WICK,  
Defendants.

Class Action

The deposition upon oral examination of  
**ADAM GALEMA**, a witness produced and sworn before me,  
Paula A. Morgan, Notary Public in and for the County  
of Hamilton, State of Indiana, taken on the 10th day  
of November, 2016, in the offices of Bose, McKinney &  
Evans, 111 Monument Circle, Suite 2700, Indianapolis,  
Marion County, Indiana, pursuant to the Federal Rules  
of Civil Procedure. This deposition was taken on  
behalf of the Plaintiffs in the above-captioned  
matter.

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1           that you don't speak with dealers?

2       A     Correct.

3       Q     How about the sales representatives? Do you speak  
4           with them?

5       A     Sure.

6       Q     What types of conversations do you have with them?

7       A     They are very few and far between. Generally, it's a  
8           question they may ask concerning the status of a  
9           vehicle or why something happened the way it did in  
10          the system.

11      Q     Why are they asking you that question?

12      A     Well, they're not necessarily asking me directly  
13           right now, currently. But they would ask either  
14           myself or my team because we have the knowledge of  
15           the business and the knowledge of the system and how  
16           it works.

17      Q     So they're calling you if there's maybe a specific  
18           issue with a certain vehicle?

19      A     They could. We are not the go-to operational, you  
20           know, call center. We're the finance team.

21      Q     And that's something I was just trying to get at. If  
22           I was a salesperson and I had an issue with a dealer,  
23           I wouldn't be calling you. I would be calling  
24           somebody else first, correct?

25      A     Correct.

1 Q Who would I call, if you know?

2 A It could vary. I mean, they could call their  
3 supervisor. They could call in to our call center.  
4 They have, you know, the operational knowledge and  
5 could help them through that potential issue or  
6 question they have.

7 Q So in your positions, or at least your position now,  
8 and maybe since you've been with the company, you've  
9 been primarily concerned with obtaining the funding  
10 or the funds that NextGear/DSC then lends out to the  
11 dealers?

12 A It's part of my job function, yeah.

13 Q Do you do work more on the -- obtaining the funds and  
14 managing the funds and the budgeting process of DSC  
15 versus actually interacting with the individual  
16 accounts where that money's being lent to?

17 A That would be fair, yes.

18 Q Okay. Who is more over the individual accounts of  
19 the dealers? Who are making those types of  
20 decisions?

21 A What decisions?

22 Q Well, how much money they can borrow or if there's an  
23 issue with the account.

24 A Sure. If you're talking about how much they can  
25 borrow, that's going to run through our lending

1 department.

2 Q Do you supervise that?

3 A No.

4 Q Who does, if you know?

5 A We have a vice president of lending.

6 Q Who is that?

7 A His name is Patrick Inks, I-N-K-S.

8 Q You do monthly reports as well now too, correct?

9 A Correct.

10 Q And those are to the -- to Mr. Herman?

11 A Horan?

12 Q Horan, I'm sorry.

13 A He's one of the recipients, sure.

14 Q These reports wouldn't have an individual sales  
15 figure from a particular dealer, correct?

16 A No.

17 Q It's more of a compilation of everything that's  
18 happened in that month company-wide?

19 A Correct.

20 Q Would these figures contain an average transaction  
21 amount, or is it even a higher level than that?

22 A Sure. No, we -- part of our analysis is to look at  
23 average metrics within the portfolio.

24 Q Would it have credit utilization rates of the dealers  
25 or an average credit utilization rate?

1 A We would have a consolidated utilization rate, yes.

2 Q How about an average interest rate?

3 A Yes.

4 Q And an average number of days financed for vehicles?

5 A Yes.

6 Q And you could determine an average daily finance rate  
7 throughout the portfolio as well, too, correct?

8 A Sure, you could get there.

9 Q And even an average amount of interest that  
10 NextGear/DSC earned for that particular day?

11 A Yeah, you could derive that from the financial  
12 statements.

13 Q Does NextGear ever get to a point where it doesn't  
14 have any more funds to offer dealers? Or is that  
15 part of your job to manage, to make sure there's a  
16 constant credit facility that's open.

17 A Yeah. I mean, there is a limit to the funding that  
18 we have available to us, yes.

19 Q Do you report to anyone at Cox Enterprises, Inc.?

20 A Directly? No.

21 Q How about indirectly?

22 A At Cox Enterprises? No.

23 Q How about Cox Automotive, Inc.?

24 A Indirectly, yes.

25 Q And how is it indirectly?

1 A Just in the sense that we are one business unit  
2 underneath the Cox Automotive umbrella, if you will.

3 Q Do you know what the other business units are under  
4 Cox?

5 A I know a few of them.

6 Q What would they be?

7 A I wouldn't know all of them. Manheim, Kelley Blue  
8 Book, Autotrader, vAuto, VinSolutions. Do you want  
9 me to --

10 Q Do you know more?

11 A An exhaustive list of everything I know?

12 Q This is a lot, I guess, huh?

13 A Yeah.

14 Q How many more are there?

15 A I believe there are approximately 40 total companies  
16 underneath Cox Automotive.

17 Q Do you know who at Cox Automotive would be your  
18 indirect report?

19 A Sure.

20 Q Who is that?

21 A You know, my boss, Dave Horan, reports to the CFO of  
22 Cox Automotive.

23 Q Who is that?

24 A Neil Johnston.

25 Q And do you have interaction with him, with

1 Mr. Johnston?

2 A Yeah.

3 Q What types of interactions do you have?

4 A Nothing frequent. More just if, you know, we're in  
5 the same place, he's visiting us or I'm visiting down  
6 there.

7 Q Where are they located?

8 A Atlanta.

9 Q Do you go there frequently?

10 A Three, four times a year.

11 Q What do you do when you go there?

12 A Generally, it's part of an overall Cox Automotive  
13 function, perhaps for the finance group.

14 Q Do they put on training events?

15 A No, I wouldn't call them that.

16 Q Do you discuss budgeting issues with Cox Automotive?

17 A I discuss NextGear budgeting issues with Cox  
18 Automotive.

19 Q And do they, ultimately, have to approve the budgets  
20 for NextGear?

21 A Yes.

22 Q Earlier you discussed a little bit about where  
23 NextGear, or I guess it was DSC at the time, got its  
24 funds from that it loans out to the dealers. And you  
25 said that it was a sort of private placement, I

1 guess, or publicly traded-type financial instruments?

2 A Not publicly traded, no.

3 Q Privately traded?

4 A Yeah.

5 Q Is that the same now as well, too?

6 A Yes.

7 Q Okay. So various companies and individuals would be  
8 able to buy a debt package?

9 A It's a 144A transaction, so only investment companies  
10 can participate.

11 Q I'm going to turn to the affidavit that you at least  
12 signed in this case. Are you familiar with this  
13 document?

14 MR. VINK: Are you going to mark this as an  
15 exhibit?

16 MR. AIREY: I wasn't going to.

17 MR. VINK: Okay.

18 A Yes, I'm familiar.

19 Q Okay. How did this document come about? Why were  
20 you asked to draft this document?

21 A I was asked to --

22 MR. VINK: Before you answer that question, make  
23 sure that you don't divulge anything that was  
24 communicated to you by counsel related to signing  
25 this declaration. That would be protected by the



1 attorney-client privilege.

2 Q Right. And I should have said that before. I don't  
3 want to know anything that they asked you. And if  
4 that's the only reason that you have for why you did  
5 it, which wouldn't be surprising, then, you know,  
6 that will be your response. I understand that.

7 A Well, are you asking why I'm here or why I signed  
8 this?

9 Q How about this. Do you know why you were chosen to  
10 draft this affidavit?

11 A Yes.

12 Q Okay. Why is that?

13 A Because I have knowledge of how floorplanning works  
14 and how the system operates and how we calculate the  
15 revenue that we generate.

16 Q But as far as the individual dealers that are  
17 mentioned in this affidavit, like Red Barn and  
18 Platinum and Mattingly, did you know about those  
19 prior to drafting this affidavit?

20 A Yes, I've heard of them.

21 Q Did you have any interaction with or any -- I guess  
22 "interaction" is the best word. Did you have any  
23 interaction with their accounts for Red Barn,  
24 Mattingly, or Platinum when you were in any of your  
25 various positions with DSC?

1 A Direct interaction, no.

2 Q How about indirect?

3 A Sure.

4 Q What would that be?

5 A It would have been part of the analysis that we do on  
6 dealers who default and charge off.

7 Q But you wouldn't have called up someone at Red Barn  
8 and said, hey, what's going on here, why are you  
9 defaulting, correct?

10 A Correct.

11 Q And same with Mattingly or Platinum?

12 A Correct.

13 Q So you may have interaction with their account here  
14 in Indiana but not actually with any of these  
15 dealers, specifically with themselves, or with those  
16 dealers?

17 A I would not communicate directly with the dealer, no.

18 Q Now, did you actually physically write every word in  
19 this affidavit?

20 A No.

21 Q Okay. Who did?

22 A It's my understanding our legal team.

23 Q As far as the exhibits that are attached to this  
24 affidavit, did you pick which exhibits to put on this  
25 affidavit?

1 A No.

2 Q I'm going to hand you what was marked as Exhibit B to  
3 your affidavit. This document has "NextGear Capital"  
4 written on the top of it.

5 A Correct.

6 Q Correct? So it's fair to say that this would have  
7 been produced after the merger between DSC and  
8 Manheim and -- with Cox, correct?

9 A Correct.

10 Q Do you know if this document was produced  
11 specifically for this litigation?

12 A Yes.

13 Q It was specifically --

14 A It was.

15 Q Okay. Did you create this Exhibit B?

16 A I did not.

17 Q Do you know who did?

18 A Yes.

19 Q Who?

20 A Our technology team.

21 Q Did you supervise them when they created it?

22 A I do not have direct supervision of them.

23 Q So you didn't ask them to create this document?

24 A Myself directly? No.

25 Q Did you have any input in the information that was

1 put in this document?

2 A Yes.

3 Q Okay. So it's fair to say that you asked them to  
4 create a document with these columns on it?

5 A I did not ask them, but I was involved in reviewing  
6 and testing the accuracy.

7 Q Other than your counsel, who else assisted you in  
8 producing Exhibit B?

9 A I can't recall exactly who was involved in the  
10 development of it. The only other person I can think  
11 of is a gentleman, Lucas Hancock.

12 Q Is he an IT person?

13 A No.

14 Q What does he do?

15 A He's senior director of customer experience.

16 Q Do you know what he does in that role?

17 A Yeah. He manages our call center.

18 Q Now, prior to the Manheim and DSC merger, had you  
19 ever reviewed Manheim Financial Services' promissory  
20 notes?

21 A No.

22 Q How about any Manheim documents, like security  
23 agreements, financial agreements?

24 A No. We are competitors.

25 Q So it's fair to say that the first time you would

1 have reviewed those documents would have been in  
2 drafting this affidavit?

3 MR. VINK: Object to the form. You can answer.

4 Q Well, let me ask it another way. When was the first  
5 time that you reviewed any documents from Manheim  
6 Financial Services, which I'll call MAFS for short.

7 A Sure. In this case. I mean, we did not have any  
8 involvement in MAFS documents.

9 Q Even after the merger you didn't go and look and see  
10 what they were doing versus what DSC was doing?

11 A I did not review a particular legal document of MAFS  
12 and compare it to what DSC was doing.

13 Q Have you done that comparison for this litigation?

14 A Have I done that?

15 Q Correct.

16 A I am not an attorney, so I've not reviewed and, you  
17 know, compared every single -- I have not done that.

18 Q Okay. So you didn't go through and say what was  
19 different between a MAFS document and a NextGear or  
20 DSC document?

21 A No.

22 Q You said that right now NextGear has about 21,000  
23 dealers?

24 A Correct.

25 Q Do you know, on a year-by-year basis, approximately

1           how many dealers DCS would have had -- I'm sorry, DSC  
2           would have had in, let's say, 2007?

3       A     I can't recall exactly. If I had to estimate, it  
4           would be six to eight thousand.

5       Q     How about in 2005? Would you know then?

6       A     That was the first year of DSC, so --

7       Q     Okay. How about 2008?

8       A     Roughly the same, six to eight thousand.

9       Q     And would that be the same up until the merger?

10      A     Correct.

11      Q     Okay. So with the merger you took on all of -- or  
12           NextGear was created to take on all of MAFS customers  
13           as well as DSC customers under one company?

14      A     Correct.

15      Q     And so did MAFS have more customers than DSC?

16      A     I believe they did, yes.

17      Q     You said six to eight thousand customers per year.  
18           Are they the same six to eight thousand customers  
19           every year?

20      A     No.

21      Q     What's the turnover rate of customers that would  
22           maybe use the floorplan in 2007 versus 2008?

23      A     I can't speak specifically to the turnover rate back  
24           then. As an estimate, we could potentially turn  
25           over, back then, maybe a hundred accounts each month.

1 Q When you say "turn over," what do you mean by that?

2 A They could leave our relationship voluntarily. They  
3 can move to another financier, another lender. They  
4 could also default on their account and be charged  
5 off.

6 Q Do you know what the default rate would have been in  
7 2007?

8 A I don't know exactly. You know, it's going to be  
9 somewhere around 5 percent of our dealers.

10 Q Is that per year or per month?

11 A It's an annual list.

12 Q Did that number stay true throughout 2008, 2009,  
13 2010?

14 A I can't speak to that. I don't have, obviously, the  
15 information in front of me. But it would not have  
16 varied significantly other than -- you know, during  
17 '08, '09, with the economic downturn, we did  
18 experience larger losses.

19 Q So maybe more than 5 percent in '08, '09?

20 A Sure. I think you would find that everywhere.

21 Q With the six to eight thousand customers that DSC  
22 would have had, did those customers also use MAFS as  
23 well?

24 A Some of them could.

25 Q Do you know, was it common in the industry to have